

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on January 29, 1999 at 9:00 A.M., in Room 420 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:  
Executive Action: SB 16, SB 36, SB 75,  
SB 163, SB 198, SB 203, SB 215, SB 221

#### **EXECUTIVE ACTION ON SB 16**

**SEN. GRIMES** remarked that he has obtained a list of actions being taken by other states regarding the Y2K problem. He asked that SB 16 be placed in a subcommittee that would thoroughly review the issue and come back to the committee with a proposal regarding the bill. He also suggested expanding the scope of the subcommittee. Potential impacts on consumers include power

outages, loss of phone service, difficulty in paying bills with credit cards or checks, loss of official records and slowdowns in a variety of public services. Some sectors of the Montana economy appear to be fairly well prepared, such as the banking industry. However, there could be pockets of unpreparedness. It is possible that the subcommittee may choose to prepare a committee bill.

**CHAIRMAN GROSFIELD** remarked that this could be a big issue and he would hate to have regrets several years from now that this issue was not addressed.

**SEN. MCNUTT** commented that as a director of a bank he has been apprized of the laundry list of items that may be impacted. He believes it is appropriate for the committee to address this issue.

**SEN. HOLDEN** offered to serve on the subcommittee.

**CHAIRMAN GROSFIELD** summarized that a subcommittee would be appointed to address the potential impacts of the Y2K problem.

*{Tape : 1; Side : A; Approx. Time Counter : 9.20}*

#### EXECUTIVE ACTION ON SB 163

**Motion:** **SEN. GRIMES** moved that **SB 36 BE AMENDED - SB016301.av1 - EXHIBIT(jus23a01)**.

#### Discussion:

**Ms. Lane** explained that the amendments add the Public Service Commission (PSC) to the language. This means that the PSC representatives can legally be on railroad property and this would not be trespassing. On page 4, lines 25 and 26, the existing language is stricken which addresses a representative of a labor organization and (a) is added which states "an official of a rail union acting in an official capacity." The codification instruction is also revised. As originally drafted, the bill would codify these provisions in Title 69, Chapter 14, which deals with railroads. The request has been to codify these provision in Title 45, which includes the criminal statutes.

**CHAIRMAN GROSFIELD** inquired as to the net effect of amendment no. 3. **Ms. Lane** stated that the reason she codified the bill in Title 69 was to keep the railroad crimes distinct from other crimes. She did not want to codify this in Title 45 because there are already existing crimes on the books that are very similar to these crimes such as trespass, theft, etc. She

believed that codifying this in Title 45 would require a little more work in terms of coordinating the two similar crimes. Other amendments have been submitted which would enact a new section which stated that the offenses contained in this bill are not intended to nor do they repeal, modify, or revise any other offense created by statute. It goes on to state that nothing contained therein should be construed to prevent the enforcement of any other statute. She believed this would cause a lot of confusion. This would leave the issue to the prosecutor's discretion to decide which crime he would charge.

**CHAIRMAN GROSFIELD** recalled that under the bill one form of trespass has a lesser penalty than trespass generally under Title 45. The prosecuting attorney would not be restricted to only using the railroad trespass law.

**Motion/Vote:** **SEN. HOLDEN** moved that **AMENDMENTS 1 AND 2 BE SEGREGATED**. The motion carried unanimously - 8-0.

**Discussion:**

**SEN. HOLDEN** questioned the purpose of amendment no. 3.

**Russ Ritter, Montana Rail Link**, explained that they are trying to mimic the FRA legislation which has been passed in 27 states. This same legislation is being offered in Idaho and is already in place in Wyoming. Montana Rail Link and the Burlington Northern operate in other states. It is important that the law be consistent in all states.

**Steve Wade, Burlington Northern and Sante Fe Railroad Company**, remarked that the amendment was at the request of the PSC.

**SEN. BARTLETT** questioned why the PSC wanted the amendment moved into the criminal statute. **Mr. Ritter** explained that the PSC believed that they did not have the manpower to become the agent that would prosecute these offenses.

**SEN. BARTLETT** questioned if the amendment was defeated and the bill provisions stayed in Title 69, would it then be the responsibility of the PSC to enforce the provision of the bill.

**Mr. Ritter** affirmed.

**SEN. DOHERTY** maintained that by moving this provision into Title 45, it would add a new level of complexity to trespass law.

**Vote:** The motion failed on Amendment no. 3 - 3-5. #1

**Ms. Lane** explained that another set of amendments were provided by Montana Rail Link and Burlington Northern. They address the recreational activities and struck hunting and fishing from the activities that would be trespass if done on railroad property. They would also provide the new section that the offenses contained in the bill were not intended to nor did they repeal, modify, or revise any other offense created by statute. Nothing contained herein shall be construed to prevent the enforcement of any other statute.

**Motion:** SEN. GRIMES moved to AMEND SB 163 - EXHIBIT(jus23a02).

**Substitute Motion:** SEN. DOHERTY moved to SEGREGATE THE AMENDMENTS AND TO STRIKE "HORSEBACK RIDING".

**Discussion:**

**SEN. DOHERTY** remarked that in regard to horseback riding, there are many trails up and down right of ways that people have been riding on for many years.

**SEN. GRIMES** opposed the amendment. Horseback riding down the right of way was the intent of the bill.

**SEN. HOLDEN** supported the amendment. Along all the railroad lines are access roads that run parallel with the tracks and for hundreds of years families have been riding down parallel service roads along the railroad tracks. They do not ride on the tracks because that would break the horse's legs.

**SEN. GRIMES** withdrew his objections.

**CHAIRMAN GROSFIELD** clarified that there was a substitute motion to change amendment no. 1 to exclude fishing, hunting, and horseback riding. This would assume that anyone who cross country skis, bikes, or hikes would not use the frontage roads.

**Vote:** The motion to adopt amendment no. 1 carried unanimously - 8-0.

**CHAIRMAN GROSFIELD** explained that amendment no. 2 would state that this provision does not affect anything else in the criminal code.

**SEN. MCNUTT** questioned whether this would lend confusion in that the other trespass laws were not to be used.

**SEN. DOHERTY** believed that the county attorney would have an extra arrow to charge the trespassers.

**Ms. Lane** clarified that when drafting the bill, she was concerned and therefore placed the provision in Title 69 in an attempt to make it distinct that these are railroad crimes. It was not the intent that the PSC would have to enforce the laws. There is a section which addresses the PSC, Title 69, Chapter 14, that states that they shall see that the laws are enforced. They do not have to handle the prosecution but simply bring the issue to the appropriate law enforcement authority and the appropriate prosecutors so that they will perform their duties in prosecuting these laws. Placing this in Title 45 creates confusion. She added that when the court looks at a statute, they will presume the constitutionality of both statutes and try to interpret them in a way that they do not conflict. However, statutes will not be upheld if a person cannot know what crime is being committed and what penalties may be faced.

She added that a handout had been provided by the Transportation Communication International Union, **EXHIBIT(jus23a03)**. This addresses railroad special peace officers. Title 49, Chapter 4, Part 9, provides for the appointment by the attorney general of special peace officers to enforce railroad laws.

**Mr. Wade** stated that the amendment clarifies that it doesn't repeal or modify any other existing law, the purpose was to make this a stand alone provision. Montana case law states that as long as each individual act is separate, a prosecutor can make a choice. They want the prosecutor to be able to use his or her discretion to enforce the law they feel best fits the circumstances.

**Vote: The motion on amendment no. 2 failed on roll call vote - 4-4.**

**Pat Keim, Burlington Northern**, explained that they do have special police officers that are Montana certified law enforcement officers.

**SEN. HOLDEN** remarked that the letter from the transportation union suggested that the railroads may be laying off special police officers if this legislation passes and that the burden would then be placed on local government.

**Mr. Keim** stated that they are trying to improve safety and prevent people from being injured. They are planning to increase their security forces. They have recently made their security forces more visible by providing them with marked vehicles and

uniforms. It is not their intention to lessen their own enforcement staff.

**Mr. Ritter** concurred that they also had their own security officers.

*{Tape : 1; Side : B; Approx. Time Counter : 9.50}*

**Motion:** SEN. GRIMES moved that SB 163 DO PASS AS AMENDED.

**Discussion:**

**SEN. BARTLETT** asked how this legislation would make enforcement any better than is currently the situation. **Mr. Ritter** clarified that the legislation was being used as a positive way to educate the public. Safety is a big issue with the loss of six lives in Montana due to trespass on railroad property.

**SEN. BARTLETT** did not believe that it was necessary to have a separate act in order to undertake an educational process. These acts are already prohibited in law and have penalties. The penalties are not an official part of our criminal code, but do add another level of complexity to crimes and sentencing.

**SEN. DOHERTY** remarked that there was draft legislation in Idaho dealing with a lessening of liability or immunity for people because they had a special railroad trespass act. He questioned whether the next step in Montana would be a request for immunity for the railroads if anyone is trespassing.

**Mr. Ritter** stated that was not the intent of the bill.

**Mr. Keim** explained that when **SEN. DOHERTY** first asked the question, he was not aware of any legislation being proposed in Idaho. He has now become aware of legislation that has been introduced which contains the issue. He has not been involved in drafting the legislation. He pointed out that the sponsor of the bill in Idaho is also a locomotive engineer for the Union Pacific Railroad. The legislation has not been introduced. He added that they had no plan to introduce similar legislation in Montana.

**CHAIRMAN GROSFIELD** agreed with **SEN. BARTLETT** regarding the belief that this bill was not necessary. He added that railroad property is very difficult to identify. The railroad has been granted a 400 foot easement through most of Montana. Their fences have been built at 150 feet, which leaves confusion. A cross county skier may be skiing outside the fence and still be

on railroad property. This complication is not addressed in the bill.

**SEN. JABS** remarked that railroads are more susceptible to vandalism than most other industries and accidents are of major concern to everyone.

**SEN. GRIMES** added that vandalism on railroad properties endangers other citizens. If the lights or crossings are vandalized, our constituents are jeopardized as they cross the railroad. He admitted that there may be technical problems in the bill which could be worked out through the process.

**Vote:** The motion carried on roll called vote - 6-3.

*{Tape : 1; Side : B; Approx. Time Counter : 10.05}*

**EXECUTIVE ACTION ON SB 36**

**Ms. Lane** explained that this bill was first in the Public Health, Welfare, and Safety Committee. Amendments were adopted but when the bill was taken from their committee there was no committee report and thus their amendments were not on the bill. She revised their amendments SB003601.avl, **EXHIBIT(jus23a04)**. She also attached language that would show the section as adopted. Another set of amendments was requested by **SEN. DOHERTY**, SB003602.avl, **EXHIBIT(jus23a05)**. These amendments would make this provision apply to everyone who might be providing health care services under Title 37. This would include amendments no. 1 and 2. Amendment no. 3 would indicate that without compensation, it must be understood and agreed upon by the parties up-front that a doctor cannot mess up and then later say the services were without compensation. This would also limit the liability health care services provided on site at the free clinic itself and would not extend to a doctor in his own office or a referred site. The limited liability would not apply if the doctor providing the free services was covered by medical liability insurance.

**Motion:** **SEN. BISHOP** moved to **AMEND SB 36 - SB003601.avl**

**Discussion:**

**SEN. HALLIGAN** asked whether this would expand from dental or oral surgeon to medical practitioner. **Ms. Lane** explained that the amendments adopted by the previous committee picked up medical practitioners as defined in 37-2-101. This would extend to doctors. It would not pick up physical therapists or nurses.

**CHAIRMAN GROSFIELD** clarified that the only time amendments stay on the bill is when there is a committee report which is adopted on the floor. The amendments made by the previous committee are not on the bill.

**SEN. HOLDEN** remarked that a doctor may recognize during the course of the first exam at the free clinic that he could better serve that patient at his office where he has more equipment. He believed this would limit the doctor's ability to serve this patient at his office.

**Ms. Lane** stated that the amendments which were moved and are the amendments adopted by the other committee would say that the limited liability would follow that patient if they were referred to another facility. She added that **SEN. DOHERTY'S** amendment would do the opposite.

**Vote:** The motion carried with **SEN. BARTLETT** voting no.

**Motion:** **SEN. DOHERTY** moved to **AMEND SB 36 - SB003602.av1.**

**Discussion:**

**SEN. DOHERTY** explained that the amendments would provide for everyone to understand up-front that this involves a "without compensation" issue. He further remarked that amendments 3 & 4 worked together. If a licensed physician is practicing, he or she would have malpractice insurance, otherwise they would not have privileges at a hospital.

**CHAIRMAN GROSFIELD** questioned whether "health care provider" was defined in statute. **Ms. Lane** stated that the 3601 amendments stated that medical practitioner is defined in 37-2-101 which states that, "medical practitioner means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing speciality as described in 37-8-202(5) and in the licensed practice to administer or prescribe drugs.

**SEN. HOLDEN** was concerned about making this definition more broad.

**CHAIRMAN GROSFIELD** questioned whether the bill included acupuncturists. **Ms. Lane** stated that it did not but amendments 3602 were drafted to pick up anyone licensed under Title 37 which is professions and occupations and would include acupuncturist, nutritionists, naturopathic physicians, midwifery, denturistry, dieticians, physical therapists, optometry, etc.



**SEN. GROSFIELD** remarked that the bill was presented to facilitate professional people who are retired to be able to volunteer their services. He questioned whether a retired physician would ordinarily maintain his or her license.

**Bill Leary, former executive of the Montana Hospital Association,** clarified that most physicians continue their license even if they move out of state.

**SEN. DOHERTY** remarked that if a physician let his or her license lapse, they would not be able to practice.

**SEN. GRIMES** stated that amendment 3 (3) and (4) appear to go in the opposite direction of the work in the Public Health Committee.

**SEN. DOHERTY** stated that **Jerry Loendorf, Montana Medical Association,** was intrigued with (4). If (4) is adopted (3) would not be necessary. He agreed to strike (3) from amendment no. 3 and to segregate the amendments.

**Substitute Motion: SEN. DOHERTY moved AMENDMENT NO. 3, SB003602.avl.**

**Discussion:**

**SEN. DOHERTY** added that the intent is to have retired physicians donate their time. If they continue to maintain their license but are not paying malpractice insurance, this language would cover them. An active physician with malpractice insurance would not qualify under this provision.

**Ms. Lane** clarified that (3) should state "Subsection (1)" instead of "Subsection (2)". **SEN. DOHERTY** accepted the change as a clarifying change.

**SEN. HALLIGAN** was concerned that physicians with medical malpractice insurance would not donate time because they would not receive the immunity.

**SEN. DOHERTY** stated that if the concern was a frivolous lawsuit this could occur at a free clinic or a regular clinic. If they carry malpractice insurance, they are covered.

**SEN. BISHOP** believed this would put a chilling effect on doctors volunteering their time.

**SEN. MCNUTT** added that one of the reasons for the bill was to mitigate the chilling effect.

**SEN. BARTLETT** believed the heart of the concern was the retired physicians who would be willing to volunteer at free clinics but will not because they have no protection since they have dropped their malpractice coverage when they left the active practice of medicine. Her understanding is that doctors with malpractice insurance did not need the immunity.

**SEN. GRIMES** questioned whether under current law a practicing physician with malpractice insurance would be liable for civil damages for acts or omission other than damages occasioned by gross negligence or willful or wanton acts. **Ms. Lane** affirmed.

**SEN. GRIMES** questioned whether the incentive may be for physicians to drop their malpractice insurance or only serve in these clinics if they do not have malpractice insurance.

**SEN. BARTLETT** clarified that retired doctors would not pay malpractice insurance because they would not need the coverage. Why would you buy car insurance if you didn't have a car?

**SEN. HOLDEN** remarked that (2) of amendment no. 3 dealt with a health care provider turning this into a bad situation where he or she may claim that they were not taking a payment for the services. He believed that the intent is to have licensed and retired people serve the poor patients and to expand free health care.

**SEN. DOHERTY** withdrew his motion.

Motion/Vote: **SEN. DOHERTY** moved to **AMEND SB 36 BY ADOPTING (2) OF AMENDMENT NO. 3, SB003602.av1.** The motion carried unanimously - 9-0.

Motion/Vote: **SEN. DOHERTY** moved to **AMEND SB 36 BY ADOPTING THE NEW (3) OF AMENDMENT NO. 3, SB003602.av1.** The motion failed on roll call vote - 4-5.

Motion/Vote: **SEN. DOHERTY** moved to **AMEND SB 36 BY ADOPTING AMENDMENTS NOS. 1 & 2, SB003602.av1.** The motion failed on roll call vote - 3-6.

Motion: **SEN. MCNUTT** moved that **SB 36 DO PASS AS AMENDED.**

**Discussion:**

**Ms. Lane** alerted the committee that the section in current law included dentists, oral surgeons, etc. The amendments were drafted separately because the testimony was that they wanted to

be able to provide these services in their dental offices since they have their specialized equipment there. Amendment no. 5 of SB003601.avl states "rendered to a patient of a clinic or a patient referred by a clinic". These means that for dentists to be covered by the immunity, the patient will need to be a patient of the clinic or referred by a clinic.

**SEN. HOLDEN** stated that they definitely made a mistake in that area and an amendment was necessary to clarify the language.

**SEN. GRIMES** maintained that the discussion in the Public Health Committee was that there would be some impact on the dental profession and this would need to be addressed at a later time in the legislative process. If doctors were to be held to a certain standard, dentists would be held to the same standard.

**Vote:** The motion carried with **SEN. BARTLETT** voting "no" - 8-1.

*{Tape : 2; Side : A; Approx. Time Counter : 10.50}*

#### **EXECUTIVE ACTION ON SB 215**

**Motion:** **SEN. BARTLETT** moved that **SB 215 DO PASS.**

**SEN. BARTLETT** explained that SB 215 takes the maximum penalty that could be given for a negligent homicide from 10 years to 20 years. The reasons are that a 20 year maximum penalty conforms better with the maximum penalty for other crimes of an equally serious nature. The kinds of cases that are charged as negligent homicide have a very broad range of circumstances and the 10 year maximum sentence is not an adequate sentence range to give a judge the opportunity to address the severity of a particular instance.

**Vote:** The motion carried unanimously - 9-0.

#### **EXECUTIVE ACTION ON SB 203**

**Motion:** **SEN. BARTLETT** moved that **SB 203 DO PASS.**

**SEN. BARTLETT** explained that this addresses the Supreme Court decision regarding writs of execution to collect on judgments. The Court held that the post judgment execution laws were unconstitutional. The elements of that decision are addressed in SB 203.

**SEN. GRIMES** remarked that on page 3, following the language "when the sheriff or levying officer", there was a suggestion that the language "acting as an agent of the court" should be inserted.

**SEN. BARTLETT** explained that following the hearing she spoke with deputy sheriffs, private process servers, and collection agency attorneys. No one wanted to address this issue. They believe it works well at this time. If it is an error by the collection agency, they carry an errors and omissions insurance for that reason. If it is an error of a private levying officer, they are bonded. If it is an error by the deputy sheriff, the county is liable.

**SEN. GRIMES** questioned if there was another reason besides the liability issue that someone would want to be designated as an agent of the court.

**Wade Copenhaver, Deputy Sheriff of Lewis and Clark County,** concurred with **SEN. BARTLETT**.

**SEN. HOLDEN** remarked there was a point raised regarding the extension of the writ to eliminate the writ every 60 days.

**SEN. BARTLETT** clarified that this would involve a continuous levy on the writ within the 60 day life. This provision is controversial. The people who have worked on this legislation are interested in simply addressing the Supreme Court decision to enable writs of execution and those processes to go forward for the collection of debts.

**Jeff Koch, Montana Collectors Association,** conveyed that the current life of the writ is 60 days. Current practice is that the writ would be served and at the pay period, the wages would be garnished. It would be necessary to reserve the writ with new calculations for the next pay period. For four times during the life of the writ, the writ would need to be reserved. The request was that it would be served once at the beginning of the 60 days and the employer would be required to honor it in consecutive pay periods. The onus would be shifted to whomever the levy is served to for monitoring that for the 60 day period.

**George Bennett, Bankers Association,** remarked that a second problem with the continuing levy would be that there are some levies that would trump others, such as child support and collection of Montana taxes. When the levies are stacked, there are priorities which further complicate the issue. This legislation is to serve the Dorwart issue and this was not an issue in that case.

**Vote:** Motion **carried unanimously.**

**SEN. BARTLETT** submitted a copy of the Dorwart decision, **EXHIBIT(jus23a06)** and **EXHIBIT(jus23a07)**.

**EXECUTIVE ACTION ON SB 198**

**Motion/Vote:** SEN. HALLIGAN moved that SB 198 BE TABLED. Motion carried 8-1 with Doherty voting no.

**EXECUTIVE ACTION ON SB 221**

**Motion:** SEN. DOHERTY moved that SB 221 BE AMENDED, **EXHIBIT**(jus23a08).

**Discussion:**

SEN. DOHERTY related that the amendments clarify the language and make it conform to traditional issuance of subpoena language.

**Vote:** Motion carried unanimously.

**Motion/Vote:** SEN. DOHERTY moved that SB 221 DO PASS AS AMENDED. Motion carried unanimously.

*{Tape : 2; Side : A; Approx. Time Counter : 11.08}*

**EXECUTIVE ACTION ON SB 75**

**Motion:** SEN. HALLIGAN moved that SB 75 BE AMENDED, SB007501.av1. **EXHIBIT**(jus23a09).

**Discussion:**

SEN. HALLIGAN explained that on page 4, section 3, of the bill the issue was raised that if surgery was done it would cause bodily injury. The first amendment addresses the surgical procedure issue or any treatment or care issues association with exempting it from mistreatment of a patient.

Steve Bulloch, Department of Justice, explained that the first amendment addressed a concern expressed that doctors and other providers could be prosecuted as part of basic treatment of a patient. Amendment no. 2 eliminates the omission language, the failure to dodge services. Amendment no. 3 ties the language to the existing definitions within Title 50. Amendment no. 4 makes it a misdemeanor to fail to maintain records. A concern was expressed that this would be used to review the records to see if medical necessity for the treatment was addressed. In section 5, they wanted to make certain that the mental state for not maintaining the records was a purposeful or knowing negligence.

**SEN. GRIMES** claimed that care by a non-physician needed to be covered. **Mr. Bulloch** affirmed that this would cover any provider. He added that **Jerry Loendorf, Montana Medical Association**, had stated that they agreed with sections 1-3 and only had a concern with section 4.

**Anita Rossman, Montana Advocacy Program**, claimed that their concern was with the amendment to section 3, part 1(a) which made an exception for people who caused the bodily injury while providing treatment and care. The language of the assault statute states that if an individual knowingly and purposefully causes bodily injury, the individual can be convicted of the crime unless there is a defense. The concern is that rather than holding people who provide treatment to the most vulnerable individuals in our communities to a higher standard, this will hold them to a lower standard. This confuses the message. They suggest that these people be held to the professional standard of treatment.

**SEN. BARTLETT** questioned whether there would be any objection to adding language concerning meeting professional standards. **Mr. Bulloch** agreed to the addition.

**Substitute Motion:** **SEN. BARTLETT** moved that **SB 75 BE AMENDED TO READ "EXCEPT WHEN THE ACT CAUSING THE BODILY INJURY AS A PART OF THE TREATMENT AND CARE WHICH MEETS PROFESSIONAL STANDARDS"**.

**Rose Hughes, Montana Health Care Association**, related that they believe the amendments help the legislation but they still oppose the legislation. She believed the last amendment may cause a person not meeting professional standards to be held criminally liable.

**SEN. BARTLETT** claimed that the section requires that the mistreatment be done purposely or knowingly.

**Vote:** Motion **carried unanimously**.

**SEN. HALLIGAN** questioned whether any changes were made to section 4. **Mr. Bulloch** responded that they had not proposed any changes. He added that **Mr. Loendorf** suggested that a peer review be provided.

**Motion:** **SEN. HALLIGAN** moved that **SB 75 DO PASS AS AMENDED**.

**Discussion:**

**Steve Browning, Montana Hospital Association**, remarked that there have been incidents where law enforcement officials from the Department of Justice have gone into facilities with a sidearm. The issues being addressed are under the jurisdiction of the Department of Public Health and Human Services. This bill deals with the criminal side of this issue. The Department of Justice already has criminal jurisdiction.

**SEN. GRIMES** related his concern about the unnecessary burden that would be caused by broadening the enforcement action that could affect costs for facilities. He questioned the necessity for the bill.

**SEN. HOLDEN** conveyed that his mother worked at a nursing facility and was always concerned about the amount of documentation necessary for minor situations on a daily basis. It was difficult to find time to provide health care for individuals.

**SEN. JABS** raised a concern that this would add another layer of enforcement for facilities who already have enough inspections.

**SEN. MCNUTT** contended that this legislation would send a bad message to the medical profession.

**Vote:** Motion **failed 2-7.**

**Motion:** **SEN. HALLIGAN** moved that **SB 75 BE AMENDED BY STRIKING EVERYTHING EXCEPT SECTION 2.**

**Discussion:**

**SEN. HALLIGAN** clarified that this would simply allow the Medicaid Fraud Unit to address any property of a patient that may be misappropriated. This would not include any reporting.

**SEN. MCNUTT** questioned whether this could, in fact, be investigated and prosecuted by county attorneys instead of the Medicaid Fraud Unit.

**SEN. HALLIGAN** responded that these are specialized cases and would require an enormous amount of work.

**SEN. GRIMES** asked who would be included in the Medicaid Fraud Unit's purview of investigation that would include patient abuse, patient neglect, or misappropriation of patient's property. **SEN. HALLIGAN** explained that under the existing law, if the perpetrator was a provider, employee, or agent, the authority was present to file a complaint and investigate. This would expand

the authority to any perpetrator and any property that might be owned by the patient.

**Mr. Bulloch** added that this legislation would specifically allow them to investigate and prosecute cases in a facility when the suspect is not an employee of the provider.

**Vote:** Motion **carried 7-2.**

**Motion/Vote:** SEN. HALLIGAN moved that **SB 75 DO PASS AS AMENDED.**

**Motion carried 5-4.**



**ADJOURNMENT**

Adjournment: 11:30 A.M.

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SEN. LORENTS GROSFIELD, Chairman

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JUDY KEINTZ, Secretary

LG/JK